

Exemption No. 14580

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

LONE STAR FLIGHT MUSEUM

for an exemption from §§ 91.9,
91.315, 119.5(G), and 119.21(a)
of Title 14, Code of
Federal Regulations

Regulatory Docket No. FAA-2015-4015

GRANT OF EXEMPTION

By letter dated September 14, 2015, Mr. Larry J. Gregory, President, Lone Star Flight Museum (LSFM), P.O. Box 3099, 2002 Terminal Drive, Galveston, TX 77552 petitioned the Federal Aviation Administration (FAA) on behalf of LSFM for an exemption from §§ 91.9, 91.315, 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow LSFM to operate certain aircraft for the purpose of carrying passengers for compensation or hire for living history flight experiences (LHFE).

The petitioner requests relief from the following regulations:

Section § 91.9 prescribes the requirements for the civil aircraft flight manual, marking, and placard requirements.

Section § 91.315 prescribes that no person may operate a limited category civil aircraft carrying persons or property for hire.

Section § 119.5(g) prescribes in pertinent part that no person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

AFS-15-4055-E

Lastly, Section § 119.21(a) prescribes in pertinent part that each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part.

The petitioner supports its request with the following information:

The petitioner states that the B-25 and B-17 aircraft have both gone through restoration before being returned to service. Both aircraft are maintained at a level that meets or exceeds to regulations. FAA Approved Inspection Programs have been established for these aircraft for nearly 30 years. Additionally, appropriate military technical orders are also included in the maintenance of the aircraft.

LSFM has developed a Safety Management System (SMS) program. All pilots are required to meet or exceed the experience and training requirements specified in the General Operations Manual and Pilot Qualifications and Training Manual. All flight operations, as well as ground and flight training, are conducted in accordance with Flight Manuals for both the B-25 and B-17, as well as the General Operations Manual and Pilot Qualifications and Training Manual. Lastly, the Pilot-in-Command (PIC) and Second-in-Command (SIC) flight and ground school training requirements ensure safe operation of the aircraft.

LSFM further states that an equivalent level of safety is accomplished through the implementation of its manual systems, which include enhanced pilot training syllabi, maintenance training requirements, the implementation of an operational control system, and a defined management structure.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to LSFM.

The FAA's analysis is as follows:

On July 21, 2015, the FAA released *Policy regarding Living History Flight Experience Exemptions for Passenger Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft* (The FAA Policy) (80 FR 43012). The FAA found that preserving historic U.S. aircraft is in the public interest, in the same manner that preserving historic buildings, landmarks, and neighborhoods has been determined to be in the public interest. While the aviation history can be represented with static displays in museums in the same manner that historic landmarks can be represented in museums, the public has

shown a willingness to support the preservation and operation of historic aircraft and a desire to experience flights in them.

The FAA Policy states that the FAA will now consider new petitions for exemption, or requests for extensions or amendments to current exemptions, using the published criteria, and deciding whether granting an exemption is in the public interest and does not compromise safety:

A. Aircraft Must Be “Historically Significant”

Each aircraft must be “historically significant” according to the following criteria:

1. *U.S. operated*
2. *Not in service*
3. *Fragile*
4. *Age*
5. *No Available Standard Category Aircraft*

FAA review and analysis of the LSFM B-25 and B-17 FAA airworthiness and maintenance records finds both aircraft meet the “Historically Significant” criteria.

B. Designation of a Responsible Person and Operational Control Structure

An operator must designate a responsible person whom the FAA can contact directly for both operations and maintenance functions. In addition, an operational control structure, or chain-of-command leading to the responsible party should be defined within each manual system. Consequently, a petitioner is expected to designate a responsible person, and its associated manual system should clearly define the qualifications, authority, responsibilities, and chain-of-command structure. LSFM has identified the responsible persons, and a review of LSFM’s associated manual system finds the necessary elements defining operational control, and chain-of-command. This manual system also defines the requirements to assume the position of responsible party, and inclusion of additional management positions, their structure, and responsibilities.

C. Safety & Risk Analysis

The FAA will use Safety Risk Management (SRM) and Equal Level of Safety (ELoS) principles to guide its safety review of LSFM’s petition. The FAA completed an in depth review of LSFM’s proposed safety and risk documents. This review included, but was not limited to, an analysis of whether hazards and risks had been identified and responded to

through appropriate mitigating strategies. More importantly, the FAA review and analysis finds that LSFM's SRM System demonstrates:

- An understanding and use of Safety Risk Management (SRM) principles which includes mandatory SRM training for all LSFM personnel associated with LHFE operations.
- A plan to mitigate risks as they become known, and elements to correct an unsafe condition or practice throughout LSFM's organization.
- LSFM has developed an SRM /SMS program similar in nature to those currently in use by part 121 air carriers that interface and complement LSFM's manual system.
- LSFM understands the need for and maintains dedicated personnel to administer its SRM/SMS program.

D. Manual System

The FAA policy states that LHFE operators should be able to demonstrate the existence of a manual system similar in terms of intent and scope of those in 14 CFR part 135. FAA review and analysis required evaluation of the operator's manuals, or collectively the LSFM's Manual System. LSFM provided for review the following proprietary documents:

- LSFM General Operations Manual (GOM)
- LSFM Pilot Qualifications and Training Manual
- LSFM General Maintenance Manual (GMM)
- LSFM SMS Manual
- LSFM Approved Inspection Program(AIP)

FAA review of LSFM's Manual System was similar in all respects to the review and surveillance process conducted under 14 CFR part 135. The FAA finds LSFM's Manual System contains the basic primary elements, including a revision system, required of part 135 air carriers. LSFM will be expected to communicate revisions to their manuals in a form and manner acceptable to their FSDO of record.

E. Other Considerations.

LHFE operations, as it applies to the passenger(s) experience, is limited to the sole purpose of being onboard the aircraft during flight. The FAA was not asked to consider expanded operations such as flight training, aerobatics, and passenger manipulation of the flight controls.

Upon review of the petitioner's submitted operational control structure, manual system, SRM/SMS, included supporting documentation, and available FAA records, the FAA finds that the petitioner's aircraft, the Boeing B-17 and North American B-25, are "historically significant", and the level of safety afforded by LSFM's operation, as described by their manuals and supporting documents, meet the criteria set forth in the published policy.

LSFM has also requested relief for the carriage of and disbursement of human remains in flight. This request is found in the public interest as expressed overall through general public support for veterans, and by veteran organizations. This request is consistent with operations conducted by other similar operators, and LSFM held relief to conduct these operations in a previously granted, now-expired exemption (Exemption 10492).

The FAA has imposed additional conditions and limitations to adequately mitigate safety concerns and risk factors as a means of ensuring an equivalent level of safety to existing regulations. This may necessitate conditions and limitations that go beyond the established regulations due to the fact that the proposed operation is, by its need for an exemption, outside the normal regulatory structure. The FAA may, when necessary, revise the conditions and limitations or require corrective action in order to adequately mitigate safety concerns and risk factors as they become known.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, under the authority provided by 49 U.S.C. §§ 106(f), 40113 and 44701, which the FAA Administrator has delegated to me, I hereby grant the Lone Star Flight Museum (LSFM) an exemption from §§ 91.9, 91.315, 91.319(a), 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR), to allow LSFM to operate certain aircraft for the purpose of carrying passengers for compensation or hire for living history flight experiences (LHFE), subject to the conditions and limitations listed below.

Conditions and Limitations:

1. This exemption applies only to the aircraft listed below:
 - a. Boeing B-17, N900RW; and
 - b. North American B-25, N333RW.
2. LSFM must maintain and apply, on a continuous basis, an operational control structure that meets the criteria specified in The FAA Policy.
3. LSFM must maintain and apply, on a continuous basis, its Manual System, to include all documents contained herein, used as their basis for an equivalent level of safety, for all operations subject to this exemption. This system must continue to ensure all criteria in The FAA Policy are continuously met, including the conditions and

limitations of this exemption. LSFM will be assigned a jurisdictional FSDO of record. LSFM must provide its manual system documents, including revisions, in a form and manner acceptable to the LSFM FSDO of record. Manual and document revisions, and a record of revisions must be provided to the FSDO of record within 10 days of any changes. These documents include, at minimum:

- a. LSFM General Operations Manual (GOM);
 - b. LSFM Pilot Qualifications and Training Manual;
 - c. LSFM General Maintenance Manual (GMM);
 - d. LSFM SMS Manual; and
 - e. LSFM Approved Inspection Program(AIP)
4. In order to participate in LSFM's program and operations, persons must initially, and on an annual basis, receive training appropriate to their position on the contents and application of LSFM's Manual System, safety and risk management program, and the conditions and limitations set forth in this exemption.
5. LSFM must maintain and apply on a continuous basis, its safety and risk management program that meets or exceeds the criteria specified in The FAA Policy for all operations subject to this exemption. This includes, at minimum, the LSFM Safety Management System (SMS), used as a basis for an equivalent level of safety.
6. LSFM must maintain all aircraft subject to this exemption in accordance with the—
 - a. LSFM General Maintenance Manual;
 - b. Maintenance requirements as specified in the appropriate type specification sheet, as amended;
 - c. FAA-approved maintenance inspection program that meets the requirements of § 91.409(e), (f)(4), and (g); and
 - d. Appropriate military technical manuals.
7. LSFM must document and record all ground and flight training and testing. The documentation and records must contain, at minimum, the following information:
 - a. Date of each training or testing session;
 - b. The amount of time spent for each session of training given;
 - c. Location where each session of training was given;
 - d. The airplane identification number(s) in which training was received;
 - e. The name and certificate number (when applicable) of the instructor who provided each session of training;
 - f. The name and certificate number of the pilot who provided each session of testing; and
 - g. For verification purposes, the signature and printed name of the person who received the training or testing.

8. No person may serve as a flight crewmember unless, since the beginning of the 12th calendar month before that service, that pilot has completed all LSFM and FAA-required training, and passed a competency check given by the FAA or an authorized check pilot in that aircraft, to determine the pilot's competence in practical skills and techniques. The competency check will consist of the maneuvers and procedures currently required for the original issuance of the commercial pilot certificate, except that an actual engine shutdown, restart and propeller feathering exercise, for those pilots already holding the appropriate Type Rating or Experimental Authorization is not required.
9. LSFM must maintain the following information and records:
 - a. The name of each pilot crewmember LSFM authorizes to conduct flight operations under the terms and conditions of this exemption;
 - b. Copies of each pilot crewmember's pilot certificate, medical certificate, qualifications, and initial and recurrent training and testing documentation to comply with these conditions and limitations;
 - c. The name of each mechanic LSFM authorizes to conduct maintenance operations under the terms and conditions of this exemption;
 - d. Copies of each mechanic's certificate, qualifications, and initial and recurrent training, and testing documentation to comply with the terms and conditions of this exemption; and
 - e. Records of maintenance performed, and maintenance inspection records to comply with the conditions above. Maintenance and inspection records must meet the requirements of §§ 43.9, 43.11, and 91.405.
10. LSFM must make available to the FAA upon request, any manual, document or record used to meet the criteria specified in The FAA Policy and these conditions and limitations.
11. Before permitting a person to be carried on board its airplane for the purposes authorized under this exemption, LSFM will inform that person of the type of airworthiness certificate held, and the significance of that certificate as compared to a Standard Airworthiness Certificate.
12. LSFM must notify the jurisdictional Flight Standards District Office (FSDO) within 24 hours of any of the following occurrences by written report, by electronic mail, or by facsimile:
 - a. Each in-flight fire in any system or area that requires activation of any fire suppression system or discharge of a portable fire extinguisher;
 - b. Each exhaust system component failure including the turbocharger components that causes damage to any engine, structure, cowling, or components;

- c. Each airplane component or system that causes, during flight, accumulation or circulation of noxious fumes, smoke, or vapor in any portion of the cabin or crew area;
- d. Except when intentional for training, each occurrence of engine shutdown or propeller feathering, and the reason for such shutdown or feathering;
- e. Each failure of the propeller governing system or feathering system;
- f. Any landing gear system or component failure or malfunction, which require use of emergency or standby extension systems;
- g. Each failure or malfunction of the wheel brake system that causes loss of brake control on the ground;
- h. Each airplane structure that requires major repair due to damage, deformation, or corrosion and the method of repair;
- i. Each failure or malfunction of the fuel system, tanks, pumps, or valves;
- j. Each malfunction, failure, or defect in any system or component that requires taking emergency action of any type during the course of any flight; and
- k. For the purpose of this section, "during flight" means the period from the moment the airplane leaves the surface of the earth on takeoff until it touches down on landing.

13. All flight operations must be conducted —

- a. At a minimum operating altitude of not less than 1,000 feet above ground level (AGL);
- b. Between the hours of official sunrise and sunset, as established in the American Air Almanac, as converted to local time;
- c. Within a 50-statute-mile radius of the departure airport with landings only permitted at the departure airport;
- d. With a minimum flight visibility of not less than 3 statute miles and a minimum ceiling of not less than 1,500 feet AGL;
- e. For passenger-carrying flights greater than 25 statute miles from the departure airport and up to 50 statute miles, the PIC must obtain weather reports and forecasts prior to flight and valid for the duration of the proposed operation that indicate that the weather would be no less than 5 statute miles visibility and cloud ceilings no less than 2,000 feet AGL. Passenger-carrying operations shall be terminated if ceiling and visibility become less than the minimum required by these conditions and limitations. Weather forecasts listing discriminators such as probability (PROB), becoming (BECMG), or temporarily (TEMPO) shall be limiting; and

- f. Operations conducted for the purpose of dispersing human remains must comply with applicable Federal, State, and local laws and regulations governing the dispersal of human remains.
- 14. All flight operations must carry no more than the maximum number of passengers permitted by the aircraft's weight and balance limitations and number of approved seats in the airplane.
- 15. All aircraft must have the equipment listed in §§ 91.205(b) and 91.207, and that equipment must be in an operable condition during the flight.
- 16. No later than 72 hours prior to commencing flight operations under the terms of this exemption, LSFM must notify the FSDO having geographic responsibility where it intends to conduct the flight operations and shall provide a copy of this exemption upon request.
- 17. Aerobatic flight is prohibited while passengers are onboard the aircraft.
- 18. Flight within 500 feet of another aircraft (i.e., formation flying) is prohibited.
- 19. Prior to flight, the PIC must ensure that a passenger briefing meeting the scope and content of § 135.117 has been provided to the passengers.
- 20. Only those listed by LSFM as a qualified pilot-in-command (PIC) or second-in-command (SIC) for the aircraft, may occupy a pilot station, or manipulate the flight controls.
- 21. LSFM must operate all flights within the confines of its manual system, the applicable regulations, conditions and limitations of this exemption, and is bound by whichever is more restrictive.
- 22. Failure to comply with any of these conditions and limitations is grounds for the immediate suspension or revocation of this exemption.

23. This exemption is not valid for operations outside of the United States of America.

This exemption terminates on February 28, 2018, unless sooner superseded or rescinded.

Issued in Washington, D.C., on February 1, 2016.

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John S. Duncan
Director, Flight Standards Service